

for any permits, licenses, approvals and authorizations for the performance of any approved Alterations in and to the Demised Premises or the operation of Tenant's business therein, provided (i) Owner is reasonably satisfied as to the factual contents of any such application and (ii) Tenant shall indemnify Owner against any loss, cost, liability, damage and expense, including, but not limited to, reasonable counsel fees, arising out of, or from, the execution by Owner of any such application except to the extent such loss, cost, liability, damage or expense arises out of any improper acts or omissions of Owner or any condition that exists in the Retail Unit or the Building which was not caused or created by Tenant. The obligation of Tenant to indemnify Owner as set forth in this Section 3.09 shall survive the expiration or sooner termination of this Lease. Thereafter and throughout the Demised Term, Tenant shall, at Tenant's sole cost and expense, maintain said licenses, approvals and authorizations.

Section 3.11. Owner's Work Contribution:

A. Subject to the provisions and requirements of this Section 3.11, and provided that Tenant is not then in default under any of the terms, covenants or conditions of this Lease on the part of Tenant to be observed or performed (beyond applicable notice and cure periods set forth herein), Owner shall contribute the sum of ONE MILLION TWENTY THOUSAND TWO HUNDRED and 00/100 (\$1,020,200.00) DOLLARS in the aggregate toward the cost and expense actually incurred by Tenant in connection with Tenant's Initial Installation. Owner's contribution on account of Tenant's Initial Installation is referred to as "Owner's Work Contribution". Irrespective of the actual cost and expense of Tenant's Initial Installation, in no event shall Owner's Work Contribution exceed the aggregate sum of ONE MILLION TWENTY THOUSAND TWO HUNDRED and 00/100 (\$1,020,200.00) DOLLARS. In no event shall more than fifteen (15%) percent of Owner's Work Contribution be applicable to those so-called "soft" costs and expenses incurred by Tenant in connection with Tenant's Initial Installation, including, without limitation, the cost of all consultant, architectural, engineering and designers fees and all permit fees and moving expenses (as opposed to so-called "hard costs" of Tenant's Initial Installation).

B. Provided that Tenant is not then in default under any of the terms, covenants or conditions of this Lease on Tenant's part to be observed and performed (beyond applicable notice and cure periods set forth herein), Owner shall distribute Owner's Work Contribution to Tenant as follows:

(i) Thirty-three percent (33%) of Owner's Work Contribution shall be paid to Tenant within thirty (30) days after notice to Owner of the satisfaction of the following conditions: (a) delivery to Owner of certification by Tenant's architect that at least twenty-five (25%) percent of Tenant's Initial Installation has been completed in accordance with the Owner approved plans therefor; and (b) delivery to Owner of partial waivers of mechanic's liens from all contractors, subcontractors, materialmen and laborers who were hired to perform any services or deliver any materials in connection with Tenant's Initial Installation;

(ii) Thirty-three percent (33%) of Owner's Work Contribution shall be paid to Tenant within thirty (30) days after notice to Owner of the satisfaction of the following conditions: (a) delivery to Owner of certification by Tenant's architect that at least fifty (50%) percent of Tenant's Initial Installation has been completed in accordance with the Owner approved plans therefor; and (b) delivery to Owner of partial waivers of mechanic's liens from all contractors, subcontractors, materialmen and laborers who were hired to perform any services or deliver any materials in connection with Tenant's Initial Installation; and

(iii) the balance of Owner's Work contribution shall be paid to Tenant within thirty (30) days after notice to Owner of the satisfaction of the following conditions: (a) Tenant

shall have opened the Demised Premises for the conduct of business to the general public with Tenant's Initial Installation complete, (b) delivery to Owner of evidence, in form reasonably acceptable to Owner, of the payment of the total costs and expenses of Tenant's Initial Installation in an amount at least equal to the amount of Owner's Work Contribution, (c) delivery to Owner evidence that all consents, approvals, or signoffs be obtained by Tenant under any Legal Requirements or as required by any Governmental Authority have been obtained, (d) delivery to Owner of final waivers of mechanic's liens from all contractors, subcontractors, materialmen and laborers who were hired to perform any services or deliver any materials in connection with Tenant's Initial Installation and (e) Tenant shall have paid the first month's Fixed Rent due under this Lease.

C. The making of the Owner's Work Contribution by Owner shall constitute a single nonrecurring obligation on the part of Owner. In the event this Lease is renewed or extended for a further term by agreement or operation of law, Owner's obligation to give Owner's Work Contribution or any part thereof shall not apply to any such renewal or extension.

D. Tenant acknowledges and agrees that Owner is merely acting on behalf of Tenant in connection with the disbursement of the Owner's Work Contribution in accordance with the provisions of this Section 3.11 to Tenant for the contractors, suppliers and materialmen employed in connection with Tenant's Initial Installation, and that Owner shall have no obligation, liability or responsibility to any of the contractors, suppliers or materialmen seeking any of the Owner's Work Contribution pursuant to any of the aforesaid contracts or agreements with such contractors, suppliers or materialmen or otherwise, provided that Owner shall be obligated to disburse such Owner's Work Contribution as expressly provided by the provisions of this Section 3.11. Nothing contained in this Section 3.11 shall relieve Tenant of any obligations or liabilities to such contractors, suppliers or materialmen under such contracts, agreements or otherwise. Nothing contained in this Section 3.11 shall relieve any obligations of Tenant under Sections 3.02 or 3.03 of this Lease. Tenant shall indemnify Owner and Owner's Indemnitees from all loss, cost, liability and expense, including but not limited to reasonable counsel fees, incurred in connection with, or arising from, any claims or actions by any contractors, suppliers or materialmen employed in connection with Tenant's Initial Installation other than any such loss, cost, liability and/or expense arising out of, or resulting from, the negligence or willful misconduct of Owner or its agents, employees or contractors.

E. Notwithstanding anything contained in this Lease, and provided, that Tenant has otherwise complied with its obligations pursuant to this Section 3.11: (i) if Owner fails to pay any portion of the Owner's Work Contribution when due and payable pursuant to this Lease and such failure is not remedied within fifteen (15) days following written notice thereof from Tenant, then Tenant may offset the balance due against Fixed Rent then due or thereafter accruing under this Lease until such outstanding amount of the Owner's Work Contribution has been credited in full to Tenant; and (ii) once paid, no portion of the Owner's Work Contribution shall be subject to recapture or "claw back" by Owner under any circumstances, including, without limitation, following a default by Tenant in the performance of its obligations hereunder or any termination of this Lease by Owner.

Section 3.12. Non-Tenant Violations: To the extent there are any issued violations affecting the Demised Premises or areas of the Building which were not created by Tenant or Tenant's agents, employees or contractors ("Non-Tenant Violations") which prevent the use of the Demised Premises by Tenant or the prompt commencement, completion and sign-off of any and all work in the Demised Premises contemplated by Tenant under this Lease, Tenant shall have no liability with respect to any such Non-Tenant Violations and Tenant shall have no obligation to cure or pay any fines or penalties associated with any Non-Tenant Violations. Notwithstanding anything to the contrary contained herein in the event any Non-Tenant Violations are discovered which, solely by reason of such Non-Tenant Violations prevent or delay Tenant from (i) performing Tenant's Initial Alterations, (ii)